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P21072.A05

Application No. 09/874,992

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : S. SCHRAGA

Group Art Unit: 3731

Serial No : 09/874,992

Examiner: Bui

Filed : June 7, 2001

For : ADJUSTABLE LENGTH MEMBER SUCH AS A CAP OF A LANCET DEVICE
FOR ADJUSTING PENETRATION DEPTH

ELECTION WITH TRAVERSE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED

NOV 05 2003

TECHNOLOGY CENTER R3700

Sir:

This is in response to the requirement for election of species under 35 U.S.C. 121 mailed from the U.S. Patent and Trademark Office on October 3, 2003, which sets a three month shortened statutory period for response November 3, 2003.

Applicant notes that this response is being submitted prior to the expiration of the initial due date of November 3, 2003, whereby an extension of time and an extension of time fee are not required for maintaining the pendency of the application. However, if any government fees are required for maintaining the pendency of this application, including any extension of time fees, Applicant hereby expressly requests any required extension of time, and authorizes that any required fee, including any required extension of time fee, be charged to Deposit Account No. 19-0089.

Reconsideration and withdrawal of the requirement for election of species is respectfully requested in view of the remarks which follow:

RESTRICTION REQUIREMENT

The Examiner has required Applicant under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, the Examiner states that claim 1 is generic.

The species are indicated in the Office Action to be the following:

Species I: Fig. 9

Species II: Fig. 14.

ELECTION

In order to be responsive to the requirement for election of species, Applicant elects the species of Fig. 9 which includes at least one protrusion. Applicant respectfully submits that at least claims 1-12 and 14-20 are generic, and at least claims 1-20 are readable on the elected species.

TRAVERSE

Notwithstanding the election of the species of Fig. 9 including at least one protrusion, Applicant respectfully traverses the requirement.

Initially, it is noted that the requirement for election of species is devoid of any indication as to the species that are to be elected. The requirement merely refers to Figures in the application that include various features, and no indication is provided in the Office Action as to the species that are considered restrictable between the different Figures. Applicant has made an attempt in the instant election to point to one of the features, such as the at least one protrusion in Fig. 9.

As to the merits of the requirement for election of species, it is noted that the requirement omits one of the two criteria of a proper requirement as now established by U.S. Patent and Trademark Office policy, as set forth in MPEP 803, viz. that "an appropriate explanation" must be advanced by the Examiner as to the existence of a "serious burden" if a restriction were not required. Due to the aforementioned omission, it is respectfully submitted that the requirement for restriction is improper and, consequently, its withdrawal is respectfully requested.

Related to this, the requirement is traversed since there would not appear to be a serious burden to examine Applicant's application in total, and for which the appropriate claim fees have been paid. Applicant submits that it would be no serious burden on the Examiner to examine all of the pending claims, because a search for all of the claims in the above-identified application should be made in order to do a complete and thorough search in view of the recognized relationship the different species for examination purposes.

In particular, a search of the elected species of at least one protrusion also would require a search of the invention recited in claim 13 which includes at least one protrusion, with the at least one protrusion being connected to a button for releasing the at least one protrusion from at least one stop.

In view of the foregoing, it is respectfully requested that the Examiner seriously reconsider the requirement for restriction and election of species, and withdraw the same so as to give an examination on the merits on all of the claims pending in this application. In any event, upon allowance of a generic claim, rejoinder of any non-elected species is respectfully requested.

CONCLUSION

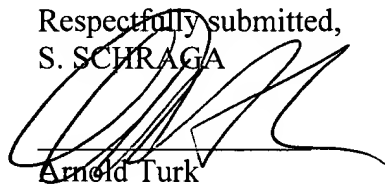
For the reasons discussed above, it is respectfully submitted that the election of species is improper and should be withdrawn.

Withdrawal of the requirement for election of species with the examination of all claims pending in this application is respectfully requested.

Favorable consideration with early allowance of the pending claims is most earnestly requested.

If the Examiner has any questions, or wishes to discuss this matter, please call the undersigned at the telephone number indicated below.

Respectfully submitted,
S. SCHRAGA



Arnold Turk

Reg. No. 33,094

November 3, 2003
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